

(1988) 11 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 449, 450 and 456 of 1983

State of Rajasthan and Others

APPELLANT

Vs

Govind Ram and Others

RESPONDENT

Date of Decision : 28-11-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Rajasthan High Court Ordinance, 1949 — Section 18

Rajasthan Public Premises (Eviction of Unauthorised Occupations) Act, 1964 — Section 4, 4(1)

Citation : AIR 1989 Raj 107 : (1988) 2 RLW 290 : (1988) 2 WLN 291

Hon'ble Judges : J.S. Verma, C.J;N.C. Kochhar, J

Bench : Division Bench

Advocate : R.C. Maheshwari, for the Appellant; A.K. Rajvanshy, for the Respondent

Final Decision : Allowed

Judgement

Kochhar, J.—All these three D. B. Civil Special Appeals arise out of a common judgment dt. July 26, 1983, of a learned single Judge of this Court, allowing S.B. Civil Writ Petition No. 1494/1982 Govind Ram v. State of Rajasthan and Ors., S.B, Civil Writ PetitionNo. 1495/1982 Kishan Lal v. State of Rajasthan and Ors. and S.B. Civil Writ Petition No. 1496/1982 Prem Prakash v. State of Rajasthan and Ors. Since the main judgment of the learned single Judge has been announced in S.B. Civil Writ Petition No. 1494/1982 and the facts and points involved in all the three appeals are similar, the facts of this appeal only may be mentioned for the purpose of convenience.

2. Govind Ram (hereinafter to be referred as the respondent) had been a tenant under the State of Rajasthan (hereinafter to be referred as the appellant), in respect of Shop No. 48A (hereinafter to be referred as the Shop) underneath Police Station Thanmandi, Udaipur. The lease agreement provided that the tenancy could be terminated by giving one month notice.

3. Since the appellant wanted to construct a new building for the Police Station, after demolishing the old one. vide notice dt. Jan 21, 1981 (Ext. R/1). the appellant intimated this fact to the respondent and gave him 30 days time to vacate the shop and handover its possession.

4. On 6-3-81 the respondent filed a civil suit for a declaration and injunction, pleading that he was a tenant of the shop under the appellant and that the appellant had started demolishing the portion of the Police Station behind the shop and on 4-3-81 had threatened to forcibly dispossess him and seeking a declaration that he could not be so dispossessed and an injunction, restraining the appellant from doing so. Along with the plaint, an application under Order 39. Rules 1 and 2 of the C.P.C., was also filed. The application was contested on the ground the proceedings under the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act. 1964. (hereinafter referred as "the Act") were being taken against the respondent and that the Court had no jurisdiction to try the suit. Vide order dt. 4-5-81, (Ex.1), the learned Munsif and Judicial Magistrate. Udaipur, observed that the respondent could not be dispossessed except by due process of law and restrained the appellant from forcibly taking possession of the shop from the respondent, during the pendency of the suit.

5. Vide application dt. 19-10-81 the appellant moved the Estate Officer, appointed under the Act. stating that tenancy of the respondent had been terminated and that he was unauthorised occupant of the shop and praying that he be evicted by taking proceedings under the Act. The Estate Officer issued notice dt. 25-11-81 (Ex.4) u/s 4(1) of the Act to the respondent stating that he was of the opinion that the respondent was in unauthorised occupation of the shop, as his tenancy had been terminated and called upon him to show cause why order of eviction should not be passed against him. The respondent contested the proceedings. Vide order dt. 6-2-82 (Ex.2), the Estate Officer held that the respondent was in unauthorised occupation of the shop and was liable to be evicted therefrom and directed him to vacate the shop within 30 days of the said order. The appeal filed by the respondent against the said order was dismissed by the learned District Judge, vide his order dt. 3-8-82 (Ex.3). The appellant took possession of the shop on 27-8-82.

6. The writ petition was filed by the respondent on Dec. 17, 1982. for quashing orders Ex.2 and Ex.3. The writ petition has been allowed by the learned single Judge on the ground that the notice terminating the tenancy was invalid inasmuch as under the lease agreement one month's notice was required to be given to the respondent whereas notice which was sent in Jan.. 1981 gave only 30 days time to the respondent to vacate the shop and also on the ground that there was nothing to show that before the Estate Officer issued notice Ex.4 he had formed the opinion that the respondent was an unauthorised occupant of the shop. The learned single Judge, further held that in view of the temporary injunction issued by the Civil Court, the possession of the shop could not be taken by the appellant. Feeling aggrieved, the appellant has filed this appeal u/s

18 of the Rajasthan High Court Ordinance, 1949.

7. We have heard the learned counsel for the parties and have also perused the record of the case.

8. The first contention raised by the learned counsel for the appellant is that the learned single Judge erred in holding that the notice (Ex.R.1) had not validly terminated the tenancy of the respondent. He has further contended that no such ground having been taken by the respondent either before the Estate Officer or before the learned District Judge or even in the writ petition, the learned single Judge erred in allowing the writ petition on that ground.

9. From Ex.2 we find that the respondent had appeared before the Estate Officer on 19-1-1982 and had admitted that the shop is a Government property and that he received one month's notice to vacate it. Perusal of order Ex.3 shows that the point about the validity of notice (Ex. R.1) was not a tall taken before the learned District Judge at the time of arguments. We further find that even in the writ petition it has not been pleaded that the notice served on the respondent was not of the period of one month. The respondent did not even file a copy of notice Ex.R.1, along with the writ petition and it was the appellant who produced the same with a view to support the fact that the Estate Officer had formed the opinion that the respondent who had failed to vacate the shop, after his tenancy had been terminated, was an unauthorised occupant thereof. This clearly shows that the parties understood that the notice sent by the appellant and received by the respondent was of the period of one month.

10. In Harihar Banerji v. Ramshashi Roy AIR 1918 PC 102 the Privy Council held that a notice should be construed in light of what it would convey to the tenant conversant with all the facts. Relying on Harihar Benerji's case the Supreme Court in Bhagabandas Agarwalla Vs. Bhagwandas Kanu and Others, observed as under (At p. 1122) : --

"A notice to quit must be construed not with a desire to find faults in it. which would render it defective, but it must be construed ut resmagis valeat quam perat."

11. We are of the view that the respondent throughout understood that the notice served on him was of one month period and as such he had not only admitted this fact before the Estate Officer but had not taken any such ground either before the learned District Judge or in the writ petition. We, therefore, hold that notice Ex.R.1 had terminated the tenancy of the respondent in accordance with the agreement between the parties. We are also of the view that the ground not having been urged before the learned District Judge, could not be allowed to be raised at the time of arguments in the writ petition, which had been filed to quash the order Ex.3 passed by him.

12. It has next been contended by the learned counsel for the appellant that the learned single Judge erred in holding that there was no material to show that the

Estate Officer had formed the opinion that the respondent was in unauthorised occupation of the shop before issuing notice u/s 4(1) of the Act, to the respondent. He has pointed out that along with the application dt. 19-10-81 the copy of the notice dt. 21-1-81 (Ex.R.1) was also sent to the Estate Officer with the request that the proceedings for the eviction of the respondent from the shop be initiated as he was in unauthorised occupation thereof, after his tenancy had been terminated.

13. The learned single Judge has observed that the file of the Estate Officer summoned by him showed that no order was recorded on the order-sheet showing that the Estate Officer had formed the opinion that the respondent was an unauthorised occupant of the shop and further that there was nothing to show as to how notice Ex.4 u/s 4(1) of the Act was issued. It has further been observed that notice (Ex.4) was a cyclostyled one in which some blanks had been filled in and neither the date of service of notice (Ex.R.1) nor the date on which the tenancy of the respondent came to an end had been mentioned in Ex.4, and that it was mandatory for the Estate Officer to record the reasons required u/s 4 on the file and to pass on order that the notice u/s 4(1) of the Act, be issued, before (Ex.4), was in fact issued.

14. Notice (Ex.4) is admittedly issued under the signatures of the Estate Officer. It has been issued in a Form "A" prescribed under the rules framed under the Act and admittedly the name of the respondent, the particulars of the premises and the reasons for recording the satisfaction that the respondent was an unauthorised occupant of the shop which was a Government property have been written in hand. No adverse inference can be drawn on the ground that the notice is in the cyclostyled form as the notice has to be issued under the Rules in Form "A". The notice clearly mentioned that the shop is a Government property and that the tenancy of the respondent had been terminated and he continued to occupy it and as such in the opinion of the Estate Officer was an unauthorised occupant. No rule has been brought to our notice which requires that before the notice u/s 4(1) of the Act is issued by the Estate Officer under his own signatures he must record such a finding on a separate order-sheet in the file. There is no dispute that the application dt. 19-10-81 for taking proceedings against the appellant and the copy of notice (Ex.R.1) terminating the tenancy or the respondent, were before the Estate Officer before he issued notice (Ex.4) u/s 4(1) of the Act, The Estate Officer thus had the material to form the necessary opinion and which he recorded in notice (Ex.4). We are of the opinion that it was not necessary for the Estate Officer to mention the date of service of notice (Ex.R.1) on the respondent or the date on which the tenancy of the respondent stood terminated. The finding of the learned single Judge on this point has, therefore, also to be set aside.

15. The learned counsel for the respondent has contended that in view of the temporary injunction issued vide order dt. 4-5-81 (Ex.1) the possession of the shop could not be taken from the respondent. As noted above the learned Munsif

and Judicial Magistrate, Udaipur while passing order (Ex. 1) restraining the appellant from forcibly taking possession of shop from the respondent had observed that the appellant could not dispossess the respondent except by due process of law. Admittedly, the proceedings under the Act were initiated by the appellant before the Estate Officer who passed the order of eviction on 6-2-82 and the appeal filed by the respondent against that order was dismissed by the learned District Judge on 3-8-82 and the possession of the shop was taken by the appellant on 27-8-82. We hold that the appellant having taken possession of the shop in execution of the order passed by the Estate Officer and confirmed by the learned District Judge cannot be said to have dispossessed the respondent forcibly and not by due process of law. No grievance can thus be made by respondent on that account and as such the finding of the learned single Judge on this account can also not be sustained.

16. The last submission made by the learned counsel for the respondent is that the appellant should be directed to allot alternative premises to the respondents for carrying on their business. No such directions can be issued by this Court in these proceedings but we hope that the appellant would consider the request of the respondents in this regard sympathetically.

17. No other point has been raised before us.

18. In view of our above discussion, we allow all the three appeals, set aside the orders passed by the learned single Judge and dismiss the above-mentioned three writ petitions with costs.